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No. 76-1357

In the Supreme Court of the United States

OCTOBER TERM, 1976

COLUMBIA TYPOGRAPHICAL UNION NO. 101, INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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Petitioner contends that the National Labor Relations Board, which had originally deferred to the labor contract, grievance and arbitration procedure an unfair labor practice charge that petitioner Union had disciplined general foreman William Culpepper for the performance of his duties as foreman, unreasonably reasserted jurisdiction over the dispute when the Union failed to proceed promptly to arbitration.

1. In January 1972, William Culpepper, the general foreman of Adams Printing Company and a member of the Union, filed a charge against the Union with the Board, alleging that the Union, *inter alia*, had fined and expelled him from union membership because of the manner in which he had performed his supervisory duties, in

violation of Section 8(b)(1)(B) of the National Labor Relations Act, 29 U.S.C. 158(b)(1)(B) (Pet. 22a-23a). A complaint issued and after a hearing, an Administrative Law Judge found that the Union had violated Section 8(b)(1)(B) (Pet. 22a-36a). However, on December 12, 1973, a divided Board, following *Collyer Insulated Wire*, 192 NLRB 837, deferred the dispute to the grievance and arbitration machinery provided in the collective bargaining agreement between Adams and the Union. The Board dismissed the complaint, but retained jurisdiction:

> for the limited purpose of entertaining appropriate and timely motions for further consideration upon a proper showing either (a) that the dispute has had [sic][1] with reasonable promptness after the issuance of this Decision and Order, been resolved by amicable settlement in the grievance procedure or submitted promptly to arbitration, or (b) that the grievance or arbitration procedures have not been fair and regular or have reached a result which is repugnant to the Act. [Pet. App. 20a.]

On October 10, 1974, the Board denied Culpepper's motion for reconsideration, which was predicated, *inter alia*, on the ground that the Union had not invoked the contract grievance procedure; the Board ruled that the responsibility for initiating that procedure rested on Culpepper (Pet. App. 11a-15a). On October 18, Culpepper initiated grievance action under the contract, but the Union did not agree to submit the matter to arbitration until January 17, 1975, after Culpepper had filed a second

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[1]The word "had" was intended by the Board to be "not." See Pet. App. 13a.

motion for reconsideration complaining of the Union's failure to pursue the arbitration (Pet. 9a).[2]

On July 11, 1975, pursuant to Culpepper's renewed request, the Board issued a supplemental decision finding that the Union had "not complied with either the meaning or the intent of the 'reasonable promptness' provision" of the Board's order:

> Despite [Union assurances of its willingness to arbitrate] * * * the dispute has yet to reach the arbitral forum because of [the Union's] repeated cancellations of [agree-to], and scheduled, times for arbitration. These numerous postponements are not commensurate with [the Union's] obligation to arbitrate the dispute with reasonable promptness. * * * [Pet. App. 9a.]

Accordingly, the Board reinstated the complaint, and, adopting the Administrative Law Judge's earlier decision, held that the Union had violated Section 8(b)(1)(B) of the Act;[3] the Board entered an appropriate remedial order (Pet. App. 9a-10a, 24a-38a).

On December 23, 1976, the court of appeals enforced the Board's order (Pet. App. 1a-5a).

2. The Board's reassertion of jurisdiction after petitioner Union failed to proceed promptly to arbitration turns on the facts of this particular case and constitutes a reasonable exercise of the Board's discretion. No issue warranting review by this Court is presented.

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[2]On January 16, 1975, Culpepper again moved the Board to consider the case on the merits because the Union had failed to submit the case to arbitration. By letter dated January 17, the Union notified the Board that "it is agreeable to arbitrate the dispute." (Pet. App. 9a).

[3]Petitioner does not contest the merits of the Board's unfair labor practice finding.

Despite the fact that petitioner had originally urged deferral by the Board, it failed to agree to submit the dispute to arbitration until after Culpepper, in January 1975, had filed a second motion for reconsideration with the Board. Twice thereafter petitioner sought and received postponements of arbitration hearing dates it had previously agreed to, the second postponement coming a week before the second revised hearing date, and almost seven months after the Board's original deferral order. The Board could properly conclude that these lengthy delays and postponements were not commensurate with petitioner's duty to arbitrate the dispute with reasonable promptness. Since the Board's "rules on deference, after all, are self-imposed * * * its discretion in this respect must be regarded as large." *National Labor Relations Board* v. *Horn & Hardart Co.*, 439 F. 2d 674, 679 (C.A. 2).

Contrary to petitioner's contention, the Board's reassertion of jurisdiction here is entirely consistent with national labor policy and with the Board's prior rulings. Indeed, here the Board initially deferred to the contractual grievance and arbitration machinery, just as it did in each of the cases cited by petitioner (Pet. 12-13). Moreover, the Board announced its limited retention of jurisdiction at the time of deferral, and simply adhered to the established conditions thereafter. Despite petitioner's attempt to portray the long grievance processing period here as "reasonable" in light of many arbitrators' overcommitments and backlogs, it is readily apparent that it was not administrative delay, but *petitioner's* delay, which caused the Board to reassert jurisdiction here.

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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Solicitor General.

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General Counsel,
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JUNE 1977.